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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No.1023/2002

APPELLANT Ganesh Ram, S/o Late Shri Sunder Singh aged about 46 years, Occupation – Labour Caste – Gond (Adiwasi S.C.) R/o Village – Kodagaon P.S. Korar, District Kanker (Chhattisgarh)

Versus

RESPONDENT State of Chhattisgarh, Through : District Magistrate, Kanker (Chhattisgarh)

CRIMINAL APPEAL u/s 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

D.B.: HON'BLE SHRI L.C BHADOO, J, & HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL JUDGMENT
(26.10.2007)

L.C. Bhadoo, J:-

Shri Sankalp Jaiswal, Counsel for the appellant.

Shri Ashish Shukla, Govt. Advocate for the State.

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 02.09.2002 passed by the Second Additional Sessions Judge (FTC), Kanker (C.G.) in S.T. No.57/2001, whereby the learned Second Additional Sessions Judge after holding the accused persons Ganesh (present appellant) and Rajni for commission of the offence under Section 302 of the IPC read with Section 34 of the IPC for committing

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

murder of Dr. Sant Masih (Veterinary Doctor), sentenced them to undergo imprisonment for life and also convicted these accused persons for commission of the offence under Section 201 of the IPC for screening the evidence of murder and sentenced each of them to undergo R.I for 5 years. However, the third accused – Habbi was acquitted.

During the pendency of this appeal, Rajni died on 15/5/2007, therefore, her appeal was held to be abated vide order dated 17.10.2007. Therefore, only the appeal of accused – Ganesh remains to be decided on merits.

The case of the prosecution in brief is that the deceased – Sant Masih was a Veterinary Doctor. On 15.9.2000, buffalo of Rajni was sick, therefore, at about 9:00 a.m., in the morning, she took the buffalo to the Veterinary Hospital in presence of Halal (PW-9). In the evening at about 4-5 p.m., when Rajni along with Ganesh (present accused/appellant) went to bring buffalo from the hospital after locking the door of her house, Chheduram Patel (PW-4) came to the house of Rajni for taking his labour charges, as the house was locked, he returned back. Later on, after about one hour, he again came to the house of Rajni along with one Devlal. At that time, Rajni and Ganesh were present in the house of Rajni. After applying ointment to the sick buffalo, Chhedulal returned to his house, because Rajni said to him that she will pay his labour charges when her nephew will come. At about 8:00 p.m. in the night, Dr. Masih, after consuming liquor was sleeping

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

in the verandah of the house of Rajni. At that time, Rajni brought Cheduram and son of accused – Ganesh to her residence for treatment of her buffalo. Chheduram saw Dr. Masih was sleeping on the cot. His body was covered with *Chaddar*. After touching the body of Dr. Masih, son of Ganesh said that on account of consumption of excessive liquor, Dr. Masih is lying in unconscious position. At that time, Rajni and accused/appellant – Ganesh were present in the house and thereafter, Chheduram returned to his house. On 16.9.2000, at about 2:00 a.m. dancing programme was going on in front of the shop of Tikaram. Vineshwar (PW-10), son of Tikaram, left the shop after its closure in the said night, thereafter, body of Dr. Masih was shifted in front of the shop of Tikaram. On 16.10.2000 at about 6:00 a.m., one boy namely Bhagwan saw the body of Dr. Masih in the verandah of the shop of Tikaram and informed the village Kotwar-Harak Ram (PW-1). By the time, Village Kotwar reached to the spot, villagers already gathered there. He saw the body of Dr. Masih in the verandah of the shop of Tikaram. He was bare foot and there was blood like material said to be seen behind the head. Thereafter, merg intimation (Ex.-P/1) was given to the SHO Police Station, Korar, based on that, First Information Report (Ex.-P/24) was registered. The Investigating Officer left for the scene of occurrence. While in police custody, Rajni gave memorandum under Ex.-P 2A, in pursuance of that, one pair of chappal was seized under Ex.-P/3, one towel stained with blood was seized

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

under Ex.-P/4 and bedding stained with blood was seized from the house of Rajni under Ex.P/-6. Accused/appellant – Ganesh gave memorandum (Ex.P/7) regarding the pillow lying in the house of Rajni, in pursuance of that, a pillow was seized under Ex.-P-5. One full shirt, Sando banyan and Lungi stained with blood was seized under Ex.-P/8. The clothes of Rajni were seized under Ex.-P/12. The statement of Chheduram was recorded under Section 164 of the Code of Criminal Procedure. The seized articles were sent for examination to Forensic Science Laboratory, Raipur, from where report – Ex.P-18 was received. Inquest (Ex.-P/21) was prepared on the body of the deceased. Body was sent for postmortem examination to A.S.K.D. Govt. Hospital, Kanker under Ex.-P/20, where Dr. V. Shukla (PW-11) conducted the postmortem on the body of Dr. Masih. He opined that the death has occurred due to asphyxia which was antemortem, the death was within the duration of 24-36 hours prior to autopsy and it was homicidal in nature. He prepared report (Ex-.P/20-A). Site plan (Ex.-P/25)-was prepared by Halka Patwari.

After completion of the investigation, charge sheet was filed in the court of Judicial Magistrate First Class, Kanker, who in turn, committed the case to the Sessions Judge, Bastar, Jagdalpur, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge against the accused persons examined 12 witnesses. The statement of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused persons were recorded under Section 313 Cr.P.C., in which they denied the material appearing against them and stated that they are innocent and have been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of the respective parties, convicted and sentenced the accused persons as aforementioned.

We have heard Mr. Sankalp Jaiswal, Counsel for the appellant and Shri U.K.S. Chandel, Panel Lawyer for the State.

At the very outset, learned counsel for the appellant has not disputed the homicidal death of the deceased. Moreover, Dr. V. Shukla (PW-11) has stated that on 16/9/2000, he conducted postmortem on the body of Dr. Masih and noticed the following injuries :

1. Clotted blood was present in the pinna of the right ear.
2. Blood was oozing from the nostrils.
3. Palm, fingers became bluish.
4. Abrasions on the right knee.
5. Swelling on the face and around the neck.
6. Semen was coming out of the penis.
7. Temporal parietal muscles were congested.
8. Brain was swollen and congested.
9. Dark red colour blood was present in the throat and echymosis was present.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

10. Lungs were congested and swollen and dark filthy blood was oozing from it.

According to the Doctor, the Injuries were antemortem in nature and were sufficient in the ordinary course of nature to cause death. Cause of death was asphyxia, as a result of pressing of the neck. Therefore, in view of the above evidence, it is established that the death of Dr. Masih was homicidal in nature.

As far as complicity of the accused in the crime in question is concerned, there is no direct or ocular evidence to connect the accused with the crime in question and conviction rests on the circumstantial evidence. As per the settled law, in order to rest conviction of an accused based on the circumstantial evidence, the prosecution is required to establish the following points in view of the decision of the Apex Court rendered in the matter ***Dhananjoy Chatterjee –Vs- State of W.B. reported in (1994) 2 SCC 222***, which is quoted below:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof." In order to rest the conviction based on the circumstantial evidence, as has been held by the Apex Court.

The prosecution has tried to establish the crime against the accused based on the following circumstances :

1. Abrasion injuries were found on the ears of the accused – Ganesh.
2. Accused – Ganesh was seen in the house of Rajni, where the dead body of Dr. Masih was lying.
3. In the intervening night of 15-16th September 2000, Ganesh went to the house of Chheduram, knocked the door 2-3 times and thereafter, the body of Dr. Masih was shifted in the verandah of Tikaram.
4. One pillow stained with blood was recovered at the instance of the accused from the house of Rajni.

First Circumstance

As far as the first circumstance is concerned, Dr. M.K. Markam (PW-6) has stated that on 19/9/2000 at about 8:15 p.m, he examined accused/appellant - Ganesh and noticed abrasion injuries behind both the ears of the accused, which were 3-5 days old. The said injuries can be caused by nail, his report is Ex.P/15. He stated that the injuries found on the body of the accused/appellant – Ganesh can be caused by stretching the ears

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 8	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

or beating. The injuries were simple in nature, therefore, from the above evidence of this Doctor, it is established that there were abrasion injuries of 3-5 days old behind both the ears of the accused/appellant – Ganesh.

Second Circumstance

As far as this circumstance is concerned, to establish this circumstance, main witness – Chheduram Patel (PW-4) has been examined by the prosecution, who has stated that on 15.9.2000, he alongwith Devlal went to the house of Rajni at about 4:30 p.m. to collect his labour charges, but house of Rajni was locked. After about one hour, when they again went to the house of Rajni, he saw Rajni and accused/appellant – Ganesh in the house. Rajni stated that her buffalo is sick, on which, all of them applied ointment to the buffalo. She said to him that when her nephew will come, he will pay labour charges to him. Thereafter, he alongwith Devlal and Ganesh left for their houses. At about 8:00 p.m. in the evening, when Chheduram was standing at the gate of his house, Rajni called him saying that her buffalo is sick. He replied that she should call Dr. Masih, on which, Rajni stated that Dr. Masih is sleeping in her house. After sometime, at about 8:30 p.m. Chheduram went to the house of Rajni along with son of Ganesh, at that time, accused/appellant – Ganesh was also present there. Rajni stated that Dr. Masih is sleeping in the verandah. Body of Dr. Masih was covered with cloth and it was lying on the cot. Chheduram called Dr. Masih after removing the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 9	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

cloth but there was no response, when he touched his body, body was cool just like dead body. He said to the son of Ganesh that it seems that Dr. Masih has died. Son of Ganesh touched the body of Dr. Masih and said that he has not died, as and when Dr. Masih consumes liquor, his body becomes cool. Thereafter, Ganesh and Rajni said to Chheduram that they will lay the cot for him and he should sleep there, on which, he became suspicious, left the house saying that he will go and inform his wife. He left Rajni and Ganesh at that place and did not return. He informed his wife that it appears that Dr. Masih has died. Thereafter, in the night, Ganesh came to his house 2-3 times, but he neither responded to him nor opened the door, due to which, Ganesh returned back. In the next morning, the body of Dr. Masih was found in the verandah of the shop of Tikaram.

A scrutiny of the evidence of this witness- Chheduram establishes the fact that when he went along with Devlal to the house of Rajni second time in order to collect labour charges, he saw Rajni and Ganesh in the house, they applied ointment to the sick buffalo and thereafter, he, Devlal and accused – Ganesh, all 3 of them left the house of Rajni. He has not stated about the presence of Dr. Masih in the house of Rajni at that time. He has further stated that thereafter, Rajni came to his house to call him saying that her buffalo is sick, on which, he replied that she should call Dr. Masih, then, she stated that Dr. Masih is sleeping in her house. Therefore, he along with the son of accused –

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 10	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Ganesh went to the house of Rajni, at that time, Ganesh was also present there. Dr. Masih was sleeping in the veranda of the house, when Chheduram touched the body of Dr. Masih, he suspected that he was already dead. As per the evidence of this witness, when he went to the house of Rajni at about 8:30 p.m., on being called by Rajni, accused – Ganesh and Rajni, both were present in the house. The body of Dr. Masih was lying in dead position, and thereafter, he returned to his house. In the night, Ganesh came and knocked the door of Chheduram 2-3 times, but he did not respond. In the next morning, dead body of Dr. Masih was found in the veranda of the shop of Tikaram. As per the medical evidence of Dr. V. Shukla (PW-11), cause of death of Dr. Masih was throttling. The question which arises for consideration is that whether this circumstance establishes involvement of the accused – Ganesh in the murder of Dr. Masih.

After perusal of the material and the evidence of Chheduram Patel available on record, we are of the considered opinion that based on the evidence of this witness, which has been referred to above, no conclusive inference can be drawn that Ganesh was party to the crime in question. No material has been adduced to establish that Ganesh had any animosity or motive to cause death of Dr. Masih. Moreover, as per the evidence of this witness, when about 5:30 p.m., he and Devlal went to the house of Rajni, Ganesh and Rajni were present in the house, they all applied ointment on the sick buffalo and thereafter, all three of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

them left the house of Rajni for their house. There is no evidence to establish that when Ganesh returned to the house of Rajni. The only evidence is that when Chheduram went to the house of Rajni at about 8:30 p.m., Ganesh was present there. Even before that, Rajni had went to the house of Chheduram to call him saying that her buffalo was sick, on which, he replied that she should take the buffalo to Dr. Masih for treatment, then, she replied that Dr. Masih is sleeping in the corridor of her house. During that period, there is no evidence regarding presence of Ganesh in the house of Rajni. Therefore, the circumstance pressed into service by the prosecution is not sufficient to establish that the accused – Ganesh was an accomplice in strangulation of Dr. Masih.

Third Circumstance

So far as this circumstance is concerned, Chheduram has stated that in the intervening night of 15-16 September 2000, Ganesh came 2-3 times to his house and knocked the door for sleeping in the house of Rajni. Merely on this ground and without any other material on record indicating the involvement of accused in crime in question, it is difficult to infer that accused was party to the crime in question. It may be just possible that Rajni might be persuading Ganesh to call Chheduram to sleep in her house. This is a very weak circumstance to infer that the accused was party to the crime in question.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 12	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Fourth Circumstance

So far as this circumstance is concerned, recovery of the pillow stained with blood from the house of Rajni at the instance of the accused is concerned, in the first instance, it cannot be said that the pillow was seized from his exclusive possession, because from the same place, number of other blood stained clothes were seized at the instance of Rajni and among those articles, pillow was also there. Therefore, recovery of blood stained pillow from the house of Rajni cannot be used to connect the accused with the crime in question. The clothes of accused – Ganesh were seized under Ex.-P/8 on 19/9/2000. It is mentioned that full shirt, Sando Banyan and Lungi, were seized stained with blood, but as per FSL report Ex.-P/8, no blood was found on these clothes of the accused. Therefore, on the basis of recovery of clothes, the accused cannot be connected with the crime in question.

As per the first circumstance, injuries were found on the ears of the accused – Ganesh . These injuries without any other circumstantial evidence cannot connect the accused with the crime in question. It is difficult to connect the accused with the crime in question on the basis of the injuries, which were simple in nature

For the foregoing reasons, we are of the considered opinion that the prosecution has utterly failed to bring on record the circumstantial evidence to connect the accused with the crime in

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 13	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

question. Therefore, through the circumstances pressed into service by the prosecution, no irresistible conclusion can be drawn that the accused was party to the crime in question. The suspicion however strong cannot take place of proof.

In the result, the appeal is allowed. The conviction and sentence imposed upon the accused/appellant under Sections 302/34 and 201 of the IPC cannot be sustained.

The accused/appellant – Ganesh is acquitted of the charge under Sections 302/34 and 201 of the IPC. It is stated that he is in detention since 2.9.2002, therefore, he be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

Shyna